IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ORIGINATING SUMMONS NO. 637 OF 1995

WITH

ORIGINATING SUMMONS NO. 638 OF 1995

ORIGINATING SUMMONS NO. 637 OF 1995

IN

SUIT NO. 2271 OF 1995

M.N. Chhaya and Anr. .. Plaintiffs.

vs.

Mr. P.R.S. Mani & Ors. .. Defendants.

Dr. Virendra V. Tulzapurkar, Sr. Counsel with
H. Tur i/by Crawford Bayley & Co.
for plaintiff.

Mr. M.K. Mudnaney for Defendants.

AND

ORIGINATING SUMMONS NO. 638 OF 1995

IN

SUIT NO. 2272 OF 1995

M.N. Chhaya and Anr. .. Plaintiffs.

vs.

Mr. J. Pereira & Ors. .. Defendants.

Dr. Virendra V. Tulzapurkar, Sr. Counsel with
H. Tur i/by Crawford Bayley & Co.
for plaintiff.
Mr. M.K. Mudnaney for Defendants.

CORAM : S.U. KAMDAR,J.
DATE : 6th APRIL, 2005

ORAL JUDGMENT :

1. These two original summons are taken out under the High Court (Original Side) Rules and both are substantially identical. These two originating summons deal with two segments of the employees, one workers category and second officers category in a company known as SKF Ball Bearing Company Private Limited. These originating summonses as well as the suits are disposed of by this common judgment.

2. Some of the material facts of the present case are as under :-

3. A private trust was floated known as SKEFKO Employees' Benefit Trust. The said trust was constituted under a Deed of Trust dated 18.4.1973 and the main object of the said trust was to provide for various benefits to the employees of a company own as SKF Ball Bearing Company Private Limited. The trust

was settled by the said company known as SKF Ball Bearing Company Private Limited. The name of the said company was subsequently changed to Skefko India Bearing Co. Limited. At the time when the trust was settled there were large number of employees who were beneficiaries in respect of the said trust. The names of the employees are given in Schedule A to the suit. The original corpus of the aforesaid trust was sum of Rs. 40,000/- The trust inter alia provided that all the employees whose gross emoluments exceeds Rs. 1600/- or more were entitled to be treated as beneficiaries under the said trust. It was also further provide that if an employee leaves the service of the settlor i.e. the company and ceases to be in employment for any reason whatsoever the said employee will cease to be beneficiary under the said trust and will not be entitled to any benefits thereunder. Some of the material clauses of the said trust are briefly reproduced hereunder and it is these clauses which are the subject matter of interpretation before me:-

> 1(a) The expression "the Settlor" shall mean and include its successors.
>
> 1(c) The expression "Employee" shall mean any employee or officer of the Settlor drawing gross emoluments of less than Rs.1,600/- per month.

1(d) The expression "the Beneficiaries" shall mean the Employee whose names are contained in the Initial List and each such Employee's wife his dependent children unmarried daughters dependant parents and his son's widow and her dependant children.

6. The Trustees shall hold the sums convenanted by Clause 2 hereof and any further sums which may be paid under any future Deed or Covenant or otherwise Upon Trust at their discretion to pay or apply the same to or for the benefit of all the Beneficiaries or any one or more of them to the exclusion of the other or others in such share and in such manner in all respects as the Trustees in their discretion may think fit; Provided Always that the Trustees may at their discretion postpone the application of the whole or any part of the sums received at any particular time and apply the same at a later time.

8(a) THE Trustees shall be entitled from time to time to add to the Initial List the name of any person who at the date of exercise of the power is an Employee as defined in Clause 1 hereof. Provided that

the Trustees shall not however be under any duty to exercise the foregoing power if they shall not chose to do so.

(b) In the event of an Employee ceasing to be in the service or employment of the Settlor, for any reason whatsoever,l such Employee and his wife, dependant children unmarried daughters, dependant parents and his son’s widow and her dependant children shall ipso facto cease to be Beneficiaries under these presents.

10. THE Trust will be valid until the death of the last to die of the Employees listed in Schedule "A" hereto or until the winding up or dissolution of the Settlor, whichever is earlier.

4. A scheme of amalgamation was proposed between the Settlor Company and the company known as SKF Bearings India Limited. Under the said Scheme of amalgamation it was inter alia provided that the settlor company will merge in the company known as SKF Bearings India Limited and from the date of the said scheme coming into operation, the amalgamated company will only known as SKF Bearings India Limited. This scheme of amalgamation was proposed to this Court under Section 391 of the Companies Act,

1956 and by an order dated 2.2.1994 this Court has sanctioned the said scheme of amalgamation. Under the terms and conditions of the said scheme of amalgamation the settlor company ceased to be in existence and only the company known as SKF Bearings India Ltd., was in existence thereafter. An appointed date fixed under the scheme of amalgamation is 1.4.1993. The scheme provided that from the said appointed date the said scheme will be effective and in operation.

5. There were certain employees of the said settlor company, namely, SKF Ball Bearing Company Private Limited who ceased to be the employees of the company from 1974-75 and joined the then existing SKF Bearings India Limited. The said employees had resigned from their job from the settlor company to join the said public limited company known as SKF Bearings India Limited.

6. It is the case of the plaintiffs that on the said scheme of amalgamation becoming operative the said settlor company has stood dissolved and the said trust has come to an end and extinguished by virtue of clause 10 thereof and the trust corpus is required to be disbursed to the beneficiaries. The employees who were in employment prior to 1974-75 have staked their claim in respect of the said disbursement of the corpus of the trust and therefore the petitioners

are required to file the present suits to determine the rights of the said employees who ceased to be in service from 1974-75 and that whether they are entitled to the disbursement of the corpus of the said trust in view of the terms and conditions of the said trust deed. A second question which has also been raised is whether the scheme of amalgamation will be operative and come into effect from the date of its sanction by this Court by order dated 2.2.1994 or the same will become operative and will come into effect from the appointed date i.e. 1.4.1993. If the appointed date is taken into account as 1.4.1993 then whether the employees whose names are mentioned in Exhibit A will be entitled to the benefits even though they are the employees who have ceased to be in employment during the intervening period i.e. appointed date of 1.4.1993 and the date on which the scheme was sanctioned which is. 2.2.1994. Though various questions are framed in paragraph 8 of the suit, all the parties before me have agreed that the only issue which really arises is the date which is the relevant date for the purpose of obtaining the benefits and disbursement of the trust corpus on the said trust ceased to be in operation by virtue of clause 10 thereof.

7. Mr. Tulzapurkar, the learned counsel appearing for the plaintiffs has contended that the employees who have ceased to be in employment from

1974-75 and prior thereto or even prior to the date on which the trust has come to an end i.e. 1.4.1993 or 2.2.1994 as the case may be would not be entitled to the distribution of the corpus in the said fund because under clause 1(c) the employees are defined in respect of those employees who are drawing gross emoluments of less than Rs. 1600/- per month. It has been contended by the learned counsel for the plaintiffs that clause 1(c) read with clause 8 (b) of the said Trust Deed provides that in an event the employee ceasing to be in service of the settlor for any reason whatsoever then such employee and/or his dependants will ipso facto cease to be beneficiaries under the said trust. It is further contended by the learned counsel for the plaintiffs that from a bare reading of clause 8(b) it is clear that those employees ceased to be in service prior to 1993 are not in any way entitled to any benefit and disbursement of the corpus of the said trust can be distributed only in respect of the existing employees namely the existing beneficiaries on the date the said company was dissolved and ceased to be in existence.

8. On the other hand, Mr. Sanghavi, the learned counsel appearing for some of the employees who have ceased to be in service prior to 1993 has contended that they are entitled to the said benefits. He has contended that the provisions of the trust deed under

clause 1 (a) provides that the expression "the Settlor" shall mean and include its successors. It has ben contended that when the company was amalgamated the newly formed company is successor in title and as such the benefit must be derived by the employees of the said SKF Bearing India Limited who is the transferee company under the scheme of amalgamation. It has alternatively been contended that in fact both the companies are not distinct and separate but are the same. The employees never resigned voluntarily and opted the new job in the company SKF Bearings India Limited from the settlor company but they were asked to shift their employment from the settlor company to the SKF Bearings India Limited and thus consequently were asked to resign from the original employment. It has been thus contended that the employees though resigned from the job of the settlor company and though clause 8 (b) provides cessation of such employee from the benefits of the trust still they are entitled to the said benefits.

9. Mr. Mudnaney, the learned counsel appearing for some of the other faction has contended that the said scheme must come into operation from the appointed date because that is the effective date and not from the date on which the sanction has ben granted by the Court. According to him, thus two employees whose names are mentioned in Exhibit F will

be entitled to the said benefits.

10. After considering the rival submissions of the parties, I am of the opinion that on the true and correct interpretation of the clauses 1 (a) read with clause 8 (b) it is only those employees who are in employment or service as on the date when the company is dissolved and ceases to be in existence will be entitled to the benefits or the distribution of the corpus under the said trust. In my opinion, clause 8 (b) is clear which operates in all cases where an employee ceases to be in employment of the settlor company. I am also of the opinion that once the person has resigned from the job he ceases to be beneficiary under the trust and in fact in the present case the employees having resigned as far back as 1974-75 ceased to be beneciaries under the said trust and cannot now at the time of distribution of the corpus claim benefits thereunder as beneficiaries. I am not impressed with the argument advanced by the learned counsel for the defendants that because clause 1 (a) of the said trust provides a settlor to include its successor and therefore the benefit must follow to those employees who have shifted their employment from the settlor company to the SKF Bearings India Limited as far back as in 1974-75. I am not inclined to accept the aforesaid argument because even if the amalgamation with the transferee company means that the transferee company

is a successor in title still the same will come into effect only after the settlor company is dissolved and once the settlor company is dissolved, the trust by virtue of provisions of clause 10 comes to an end and ceases to exist. It is, therefore, not possible to accept the contention of the learned counsel for the intervenors Mr. Sanghvi i.e. those employees who ceased to be in employment in 1974-75 are also entitled to the benefits of the said scheme.

11. In so far as the second issue is concerned, I am of the opinion that the scheme must come into effect not from the date when the scheme is sanctioned by the Court but from the appointed date which is prescribed under the scheme itself and I am also fortified in my aforesaid views by the judgment of the Apex court in the case of Marshall Sons and Co. (India) Ltd., v. Income-Tax Officer, reported in 1997 Vol. 88 Company Cases, page 528 and in which it has been held as under :-

> "Every scheme of amalgamation of companies has necessarily to provide a date with effect from which the amalgamation / transfer shall take place. It is true that while sanctioning the scheme, it is open to the company court to modify the said date and prescribe such date of amalagamation/transfer as it thinks appropriate in the facts and

> circumstances of the case. If the court so specifies a date, such date would be the date of amalagamation/date of transfer. But where the court does not prescribe any specific date but merely sanctions the scheme presented to it, the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise."

It is thus clear that once a scheme is sanctioned by a Court by passing an order under sections 391 and 394 of the Companies Act, the said sanction relates back to the date on which the scheme was to come into operation as provided in the scheme. In the present case, the sanction granted to the scheme specifically provide the date 1.4.1993 as an appointed date and thus the said scheme will be effective and in operation from 1.4.1993. Thus, consequently the settlor company, namely, SKF Ball Bearing Company Private Limited stood dissolved and ceased to be in existence with effect from 1.4.1993. Thus, as on the date on 1.4.1993 the aforesaid two employees whose names are mentioned in Exhibit A were in service and therefore they are entitled to the said benefits.

12. In the aforesaid circumstances I answer both the aforesaid questions accordingly. The Originating Summonses No. 637 of 1995 and the suit No. 2271 of

1995 both are disposed of accordingly.

13. In so far as the Originating Summons NO. 638 of 1995 and Suit No. 2272 of 1995 are concerned, both the parties agree that both the matters are the same the only difference in this matter is that the employees are the officer category drawing salary above Rs. 1600/-. Another difference is that the benefit of the trust in this case will go to three employees in place of two employees whose names are set out in Exhibit "E". The originating Summons No. 638 of 1995 in Suit No. 2272 is accordingly disposed of. However, there shall be no order as to costs in both the matters.